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GEORGE M. BEARD, A. M., M. D., Edited with Notes and Additions by A. D. ROCKWELL, A. M., M. D. Third Edition—Enlarged. New York: E. B. Treat, Publisher, 5 Cooper Union. 1894.

This book is one which every brain-worker, and especially every lawyer, should read; not with the idea of becoming his own medical adviser, or of self treatment, but for the purpose of becoming acquainted with the symptoms of nervous exhaustion, so common among lawyers, and thereby avoiding danger.

Having been obliged almost entirely to suspend professional work for nearly three years we speak feelingly on this subject when we say that an ounce of prevention is better than a pound of cure. The greater part of the evil effects of nervous exhaustion are due to ignorance and might, with a very small amount of knowledge correctly applied, be easily obviated.

We can cordially commend this book.

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A TREATISE ON THE LAW OF LIENS, COMMON LAW, STATUTORY, EQUITABLE AND MARITIME. By LEONARD A. JONES. Second Edition. Revised and Enlarged. In Two Volumes. Boston and New York: Houghton, Mifflin & Company. The Riverside Press, Cambridge. 1894.

Prior to the first edition of this work it is a question whether any other branch of the law could lay claim to an equal lack of clear comprehension. A "lien" has always represented to the mind of the average man (and to only too many lawyers), the idea of a charge upon property, of any and all kinds and descriptions, even as to the newspaper omniscient "defalcation" is a dignified species of embezzlement. Accordingly, side by side with the liens of attorneys, etc., we hear men speak of the lien of a mortgage, an assignment, a judgment, etc., etc. Even in that great fountain of law, the Acts of Assembly, such confusion of terms is the invariable rule. It would be difficult to find a statute that speaks of the "encum-

brance" of a mortgage, or of a judgment. And yet, as Mr. Jones clearly shows, this general, popular nomenclature is, as it is very apt to be, wholly in the wrong. The so-called "liens" of this kind find, therefore, no place in this work; and the unsuspecting lawyer who turns to it for information on those subjects will be disappointed, even though his mental horizon may be enlightened in another direction.

What, then, is a "lien," within the scope of this work? It must be confessed that, though the several species of liens are defined with great clearness, the broad line of distinction between a "lien" in general and a charge on property is left in a hazy state. But probably this was inevitable. It is hard to find a definition which will include common law, statutory and equitable, to say nothing of maritime liens. "A lien at law," says the author, "is an implied obligation whereby property is bound for the discharge of some debt or engagement. It is not the result of an express contract; it is given by implication of law." Now it is clear that this definition cannot be applied to a statutory lien, which is given by the express words of a statute, unless we regard the statute as implied in the agreement between the parties. So, too, an equitable lien, which arises from express words in a contract, cannot be classed under this definition. An example will make this clearer. At common law an innkeeper has a lien on the goods of his guest until his charges are paid. The guest may contract with him that he shall retain a special part of his baggage. This discharges the lien on the rest, and creates an equitable lien on the part so retained. Again, a lien on the property of a guest may be declared by statute, which will supersede the common-law lien. In each case the result is the same, but the three liens are totally different in their origin.

The most general definition of a lien that Mr. Jones gives is, that it is a right of detainer. This, however, only applies to personal property, and not to a mechanic's, or other lien on real estate. A lien on personal property can in general only attach to property in the possession of the lien-holder, and which he can detain; but the mechanic is not in possession of the real estate to which his claim attaches.

Without going into the subject farther it may suffice to say that the most satisfactory definition of a "lien" in the strict sense is, that it is a fixed charge upon specific property, not coupled with an interest. This Mr. Jones clearly implies, though he does not state it in so many words.

There is very little that has escaped the author's research; and he has fortunately not felt himself tied down to a bare statement of the express decisions on any subject, but has gone in most cases into a more or less detailed discussion of collateral points, tending to elucidate questions not yet decided, but which may arise. The chapter on the Lien of a Finder of Lost Goods is a clear illustration of this. After stating that at common law the finder has no lien, he does not merely add that if a reward has been offered the finder has a lien for the reward; but goes on to discuss the incidents of the offer, when it becomes a contract, what constitutes a performance of its terms, when the offer may be withdrawn, etc., until he has covered almost every conceivable question that can be raised.

And yet, there are some matters which Mr. Jones has either failed to notice, or considered as beneath his notice. It is rather depressing to local pride to find no mention of *Cadwalader v. Dilworth*, 26 W. N. C., 32, the sole case in which a court has decided that an *agistor* has a lien at common law upon a horse which he has taken to board. However, opposed as that case is to an overwhelming array of authorities, its citation would have served no good purpose, except as showing the presumable opinion on that subject in Pennsylvania.

There are some slight inaccuracies and deficiencies of statement to be found here and there. In discussing lumbermen's liens the author states (§ 722), that "the contractor is not in general an agent of the owner to employ men and bind the owner or his property." But he omits to state that this rule depends wholly on the nature and terms of the contract (in other words, whether or not the contractor is to be regarded as independent). If he is not independent, but under the control of the owner, authority to employ men on behalf of the latter will, in the absence of express restrictions, be

inferred from the contract. It is clear, therefore, that no general rule can be predicated where it depends on the circumstances of the particular case.

So, he states in § 1033 that the lien-holder who sells the property subject to the lien may set up the lien as a defence to any action which the owner may bring against him for a conversion. But this, as shown by §§ 523 and 525, is only partially true. In any case the lien could only serve as a defence *pro tanto*; that is, as a set-off. And he does not state the fact, decided in one of the very cases he cites, that the purchaser of the property may set up the lien as a defence to an action of replevin brought by the owner, he being in this regard substituted to the rights of the lien-holder.

Again, in discussing the vendor's lien upon real estate for unpaid purchase money, while rightly omitting Pennsylvania from the list of States in which that lien is recognized, the author also omits to state that it was nevertheless decided in *Stokely v. Trout*, 3 Watts, 163, that whenever the agreement between the vendor and vendee contemplates another deed, though in the words of a present conveyance, the vendor has a lien for the unpaid purchase money.

And again, in treating of the effect which an agreement by the principal contractor not to file a mechanic's lien has upon the right of a sub-contractor, though correctly stating the law to be that a covenant to that effect by the contractor will bind the sub-contractor, he overlooks the decision in *Evans v. Grogan*, 153 Pa., 121, that to have that effect, it must be a covenant in the strict sense, not a mere promise that liens shall not be filed.

All these errors, however, are but of minor importance compared with the value of the work as a whole, and are such only as are inevitable in any human performance. No other work on the subject can compare with this in logical arrangement, clear style, or accurate statement. The chapters on Mechanics' Liens, which form over two-thirds of the text of the second volume, contain a presentment of the law on that vexed subject that is without a rival. After their perusal, one can say with confidence that he knows something about the

subject, a statement which would have been rash, indeed, before Mr. Jones gave us the fruit of his labors. The same might be said of other portions of the work.

A very valuable feature is the abundant presentment of statute law, a feature which was really rendered essential by the nature of the subjects treated; but it is matter for regret that the references are too often made to compilations only, and not to the annual volumes of laws. An index of statutory law, though involving much additional labor, would have been an important adjunct to the work.

The index, too, might have been fuller. As it is, it savors too much of the logical arrangement of the work, and not enough of the alphabetical nature of an index proper. You will find the titles "contractor" and "sub-contractor" safe and sound under the shelter of "Mechanics' Liens," but will look for them in vain in their alphabetical place. So with many other subjects.

It is also disappointing to find the subject of municipal liens dismissed with a cursory reference to the liens of taxes and water rents. These are certainly matters of great importance, and fall as legitimately within the scope of the work as do Mechanics' Liens. It may be, however, that the author felt himself restrained within the bounds of the property relations between private individuals, in which case the liens of the public would not strictly belong to the subject in hand. Yet, treated as Mechanics' Liens have been, it would have greatly enhanced the value of the work; and we may be permitted to express the hope that in the future the author may turn his hand to this subject also.

R. D. S.

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FORMS IN CONVEYANCING AND GENERAL LEGAL FORMS, Comprising Precedents for Ordinary Use, and Clauses Adapted to Special and Unusual Cases. With Practical Notes, by LEONARD A. JONES. Fourth Edition. Boston and New York. Houghton, Mifflin & Co., 1894.

The first edition of Mr. JONES's work made its appearance about seven years ago. Only last year we expressed our